

REMARKS

Claims 3, 5, 23, and 29-34 were pending in the current application. Applicants have amended independent claims 3, 29, and 32. Reexamination and reconsideration of all of the claims, as amended, are respectfully requested.

Double Patenting

The Office Action again rejected claims 3, 5, 29-30, and 32-33 on the grounds of nonstatutory obviousness-type double patenting based on claims 2 and 5 of U.S. Patent No. 7,018,355, claims 1, 3, and 8 of U.S. Patent No. 6,899,694, and claims 1-6 of U.S. Patent 7,001,356.

Applicants had previously submitted and paid for a terminal disclaimer of these patents, but the Office Action noted that signatory Joseph K. Liu was not attorney of record for the case.

Applicants submit herewith paperwork executed by the assignee, Advanced Medical Optics, Inc., revoking all previous powers of attorney and establishing new attorneys of record in the case, including attorney Steven W. Smyrski.

Mr. Smyrski has signed the terminal disclaimer provided herewith. Applicants thus file herewith a terminal disclaimer in compliance with 37 C.F.R. §1.321 to overcome these nonstatutory double patenting rejections. Applicants respectfully submit that this terminal disclaimer overcomes these grounds for rejection.

Applicants have already paid for statutory disclaimer of the three enumerated patents and thus submit that a second statutory disclaimer fee is not required. However, should it be determined for any reason an insufficient fee has been paid, please charge any insufficiency to ensure consideration and allowance of this matter to Deposit Account 502026.

§ 102

The Office Action rejected claims 3, 5, 23, and 29-34 under 35 U.S.C. § 102(b) based on Armeniades et al., U.S. Patent 4,841,984 (“Armeniades”). Applicants have amended independent claims 3, 29, and 32.

The present independent claims, as amended, call for a bi-directional positive displacement pump. The pumps of Armeniades, specifically pumps 107, 123, and 140, are not bidirectional positive displacement pumps. As shown in FIGs. 8, 9, and 10 of Armeniades, fluid flows in a single direction in these pumps, and control of pumping is control of the uni-directional speed of the pumps. See, e.g., Armeniades, Col. 8, ll. 19-24 (“the resulting signal to the microprocessor controller operates to speed up the pump a predetermined amount for infusing additional saline solution into the eye...if a pressure increase is detected, the pump speed is reduced.”) Thus no reverse or pumping direction other than forward is contemplated by Armeniades, and no bi-directional pump or control of a bi-directional pump is suggested nor disclosed in Armeniades.

Thus independent claims 3, 29, and 32 are not anticipated by Armeniades. Claims depending from allowable claims 3, 29, and 32 are allowable as they include limitations not present in the cited references.

§ 102

The Office Action rejected claims 3, 5, 23, and 29-34 under 35 U.S.C. § 103 based on Armeniades et al., U.S. Patent 4,548,205 (“Armineades ‘205”) in view of Armeniades.

The Office Action combines the fluid delivery mechanisms of Armineades ‘205 with the pumps disclosed in Armineades to come up with the claimed invention. Applicants dispute combining the references in this manner, but more importantly, note that the concept of bi-directional pumping and controlling a bi-directional pump is missing from both Armineades ‘205 and Armineades. The bi-directional pumping aspect

is provided in independent claims 3, 29, and 32, as amended, and serves to differentiate the present claims from the cited references. In short, the present independent claims, as amended, include a limitation not shown in the combination of Armeniades and Armeniades '205, and the absence of this bi-directional limitation renders the claims nonobvious.

All claims depending from allowable independent claims 3, 29, and 32 are allowable, as they include the bi-directional positive displacement pumping aspects. Applicants further submit that use of Armeniades '205 is simply a hindsight reconstruction of the claims in an effort to deprecate the claimed invention. For these reasons, all claims are allowable over the cited references, alone or in combination.

CONCLUSION

In view of the foregoing, it is respectfully submitted that all claims of the present application are in form for allowance. Reexamination and reconsideration of all of the claims are respectfully requested and allowance of all the claims at an early date is solicited.

It is believed that all of the pending claims have been addressed. However, the absence of a reply to a specific rejection, issue or comment does not signify agreement with or concession of that rejection, issue or comment. In addition, because the arguments made above may not be exhaustive, there may be reasons for patentability of any or all pending claims (or other claims) that have not been expressed. Finally, nothing in this paper should be construed as an intent to concede any issue with regard to any claim, except as specifically stated in this paper, and the amendment of any claim does not necessarily signify concession of unpatentability of the claim prior to its amendment.

Applicants believe that no fees are required with the present response beyond those included herewith. Should it be determined for any reason an insufficient fee has been paid, please charge any insufficiency to ensure consideration and allowance of this matter to Deposit Account 502026.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Steven W. Smyrski', written over a horizontal line.

Steven W. Smyrski, Esq.
Registration No. 38,312

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SMYRSKI LAW GROUP, A P.C.
3310 Airport Avenue, SW
Santa Monica, California 90405-6118
Phone: 310.397.9118
Fax: 310.397.9158